(1)

Supreme Court, U.S.
FILED

No. 00-932 OCT - 6 2000

OFFICE OF THE CLERK

In The

Supreme Court of the United States

GEORGE WATSON, JR.
Post Office Box 502
Farmingdale, NJ 07727
Petitioner

v.

Ocean County College Board of Trustees, et al
3205 Fire Road
Pleasantville, NJ 08232-0850
Respondents

On Petition for Writ of Certiorari From Two Decisions Of the United States Third Circuit Court of Appeals and The United States District Court for the District Of New Jersey to The United States Court of Appeals for The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

George Watson, Jr.
Post Office Box 502
Farmingdale, NJ 07727
(732) 928-7966
(732) 498-8080 (Pager)

90+P

QUESTIONS PRESENTED FOR REVIEW

1. Did the Judge "Racial Profile" when he accepted the Defendant's request to vacate a Default Judgment after they Answered, Pled and Responded to the Complaint and never made any objection to the service for nearly one year? Did they waive all their rights under law until the Judge kept blocking me from filing my papers to convert the Default into a Judgment?

2. Did the Honorable Garrett E. Brown, Jr. violate the due process clause of the Fifth and Fourteenth Amendment of the United States Constitution by saying in some of his rulings that he received Mr. George Watson, Jr.'s letter of being sick and then saying in the final ruling that he did not know why there was delays on Mr. Watson's part?

3. Did the Honorable Garrett E. Brown, Jr. violate the due process clause of the Fifth and Fourteen Amendment, the Americans with Disability Act, Rehabilitation Act of 1973 and New Jersey Law Against Discrimination, Title 10 after being informed of a disability of reduced vision, broken leg and treatment for total health system failure? The Judge was then asked to appoint an attorney to take over the case and he said no.

4. Did the Honorable Garrett E. Brown, Jr. Republican Judge over a Republican County completely deny Mr. George Watson, Jr. access to the courts in violation of the United States Constitution and the New Jersey Constitution by failing to provide a reasonable accommodation for a handicapped independent voter and political candidate for county office who was also suffering with a congestive disability?

5. Does the District Court discriminate against pro se litigants using their discretion, which is nothing more than Judicial Racial Profiling by the Court?

6. Can Judges across America, who are Republicans and Democrats, use the Courts as a political base to use Judicial Racial Profiling and mask it with the law?

7. Can the District Court use some Orders that support their view and ignore all other orders that do not support their view? Also, can a District Court Judge ignore the Rule of Law only when it is convenient to aid the Party?

8. Did the Honorable Garrett E. Brown, Jr. violate the due process clause of the 5th and the 14th Amendment of the U.S. Constitution by ignoring the Honorable Freda F. Wilson's scheduling order and allowing the Defendants to vacate a default judgment after it had been weighed?

PARTIES TO THE PROCEEDINGS

The plaintiff was Respondent Petitioner George Watson, Jr.

The defendants were: Ocean County College Board of Trustees, Ocean County College, James W. Holzapfel, Norma Paul, Vince Packer, Carol Gurdjian, Dr. Milton Shaw, John Whalen, Jan Shlala, Dean Robert Seymour, Dean John Weber, Carol Regula, Dean John Kane, Natlie Stites, Ken Wiggins, New Jersey Education Association and Dawn LeCompte.

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CITATIONS TO OFFICIAL AND UNOFFICIAL REPORTS

The Petition for Rehearing was denied July 10, 2000. Also, the Initial Decision was Unreported – Not Precedential.

JURISDICTION

Based on this Order from the Third Circuit, Petitioner invokes the jursidiction of this Court under 28 U.S.C. § 1254(1). Likewise, jurisdiction is found pursuant to Supreme Court Rules 13(1) and (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment - No person shall be held to answer to a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for taken for public use, without just compensation.**

Fourteenth Amendment - SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State **deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

On October 20, 1997 a Complaint was filed with Jury Demand. On October 21, 1997 a Notice of Allocation and Assignment was filed before Magistrate Wolfson.

George Watson, Jr. sent a letter requesting issuance of a summons on December 24, 1997. On December 24th, 1997 a Summons was issued for all Defendants.

Return of Service was executed as to all defendants on February 15, 1998. Answer due on March 7, 1998 for all defendants.

Answer to Complaint by Carol Regula, Ken Wiggins, New Jersey Educational Association and Dawn LeCompte on March 16, 1998.

Order issued on March 16, 1998 setting scheduling conference for 11:30 on April 21, 1998 and signed by Magistrate Judge Freda L. Wolfson.

Letter request by Plaintiff, George Watson, Jr. for entry of default judgment against defendants for failure to plead on March 26, 1998. Entry date was March 30, 1998.

On March 2, 1998 request made by George Watson, Jr. for Default against Ocean County College Board of Trustees, James W. Holzapfel, Normal Paul, Vince Packer, Carol Gurdjian, Milton Shaw, John Whalen, Jan Shlala, John Seymour, John Weber, John Kane and Natlie Stites.

On March 2, 198 Default entered as to Ocean County College Board of Trustees, James W. Holzapfel,

Normal Paul, Vince Packer, Carol Gurdjian, Milton Shaw, John Whalen, Jan Shlala, Robert Seymour, John Weber, John Kane, and Natlie Stites granting [8-1] default requested for failure to plead.

Deficient Motion filed by George Watson, Jr. for default judgment on April 7, 1998. [Entry date April 13, 1998]

On April 20, 1998 Letter Order signed by Mag. Judge Freda L. Wolfson directing an in-person conference is not required, etc.

Scheduling Order dated April 20, 1998, setting Discovery cutoff for October 30, 1998; Joining of Parties June 12, 1998; Amending of Pleadings on September 11, 1998; Discovery Motion due on or before October 23, 1998; Dispositive Motion due on or before November 30, 1998; Pretrial memoranda to be submitted on or before November 30, 1998; and setting schedule for service of certain reports. Signed by Mag. Judge. Freda L. Wolfson.

Notice of Motion to Dismiss filed by Ocean County College. Motion hearing set for 10:00 on May 18, 1998 on [12-1] motion.

May 18, 1998 Minute entry: Proceedings NOT recorded. The following actions were taken under advisement: [12-1] Motion to Discuss by Ocean County College by Judge Garrett E. Brown, Jr. [Entry date May 19, 1998].

On June 17, 1998 Notice of Motion to Certify Case as a Class Action, to Appoint Counsel for the Class, to strike [5-1] Answer, for leave to file Amended Complaint by Plaintiff. Motion hearings set for August 3, 1998 on

[14-1], [14-2], [14-3] and [14-4] motions. [Entry date June 19, 1998]

Certification of Service of Answer by Carol Regula, Ken Wiggins and N.J. Education Association on June 21, 1998.

Response by Ocean County College on August 3, 1998 in support of [12-1] Motion to Dismiss.

Memorandum Opinion signed by Judge Garrett E. Brown, Jr. on September 1, 1998. [Entry date September 2, 1998]

Order Denying [12-2] Motion to Dismiss by Ocean County College. signed by Judge Garrett E. Brown, Jr. on September 2, 1998.

Minute entry: Proceedings NOT recorded; Minutes of September 8, 1998. These actions taken under advisement: [14-1] Motion to Certify Case as a Class Action, [14-2] Motion to Appoint Counsel for the Class, [14-3] Motion to Strike [5-1] Answer. [14-4] Motion for Leave to File Amended Complaint (by Judge Garrett E. Brown, Jr.) [Entry date September 9, 1998]

On September 24, 1998 Notice of Attorney Appearance for all defendants with the exception of LeCompte, Wiggins, Regula and New Jersey Education Association by Gerald J. Corcoran.

On September 24, 1998 Notice of Motion for Order to Vacate Default, and for leave to file answer out of time by all defendants with the exception of LeCompte, New Jersey Education Association, Widgeons and Regula.

Motion set for 10:00 on November 2, 1998 on [21-1] motion and [21-2] motion.

Minute Entry: Proceedings NOT recorded. Minutes of November 2, 1998. The following actions were taken: [21-1] Motion for Order to vacate default taken under advisement; [21-2] Motion for Leave to File Answer Out of Time taken under advisement. (By Judge Garrett E. Brown, Jr.) [Entry date November 5, 1998]

Memorandum Opinion on February 2, 1999 (signed by Judge Garrett E. Brown, Jr.)

On February 2, 1999 Order granting [21-1] Motion for Order to Vacate Default; granting [21-2] Motion for Leave to File Answer Out of time; denying [14-1] Motion to Certify Case as a Class Action; denying as moot [14-2] Motion to Appoint Counsel for the Class; denying [14-3] Motion to Strike [5-1] Answer Denying [14-4] Motion for Leave to File Amended Complaint (signed by Garrett E. Brown, Jr.)

Answer to Complaint by Ocean County College Board of Trust, Ocean County College, James W. Holzapfel, Norma Paul, Vince Packer, Carol Gurdjian, Milton Shaw, John Whalen, Jan Shlala, Robert Seymour, John Weber, John Kane, Natlie Stites; Jury Demand on March 1, 1999.

On March 11, 1999 Notice of Motion for an Order Dismissing Plaintiff's Complaint by Ocean County College Board of Trust, Ocean County College, James W. Holzapfel, Norma Paul, Vince Packer, Carol Gurdjian, Milton Shaw, John Whalen, Jan Shlala, Robert Seymour, John Weber, John Kane, Natlie Stites. Motion set for April

19, 1999 at 10:00 on [26-1] Motion. [Entry date March 12, 1999].

Deficient Motion filed by George Watson, Jr. on August 5, 1999 for Rule 16 hrn, to stay, for sanctions for extension of time. (No BR) [Entry date August 9, 1999]

Memorandum Opinion (signed by Judge Garrett E. Brown, Jr.) on August 16, 1999.

On August 16, 1999 Order Granting [26-1] Motion by certain defendants for an Order Dismissing Complaint; Dismissing defendants Regula, Wiggins, LeCompte and New Jersey Education Association, and directing the clerk to close this file. (Signed by Judge Garrett E. Brown, Jr.)

Case was closed on August 16, 1999.

B. STATEMENT OF THE FACTS

Grievance filed with College. Grievance denied and Complaint filed against the Union for violation of the duty of fair representation. Moved grievance to arbitration. Arbitrator was selected. College officials appealed to a retired Republican judge to issue an order to stop arbitration. No union official was in court on the date that the judge issued the order to stop the arbitration. I opposed it with no union official there. Then filed case in Federal Court against the Union and against the College for their unfair labor practices. Still without my day in court.

Case originally filed in the Eastern District of Pennsylvania and transferred to New Jersey. Case then appeared before the Honorable Ann E. Thompson, U.S.D.J. Case summarily terminated after two other parties joined in

the case. Request for class action denied and our request for discovery was denied so no depositions of the defendants were ever taken, even when we requested.

Mr. George Watson, Jr. started employment with Ocean County College as a Minority Graduate Assistant in the fall of 1989. My assignment was with the Criminal Justice Department and I remained there until June 1991 and after being told that I would have a 90-day probation. I relied upon that fact from Ms. Patty Hall in personnel. I never received that evaluation even when I requested it. In April of 1991 I also filed a valid petition for the 1991 Election. The Position that I was seeking was Ocean County Freehold, as a registered Independent and I campaigned as such with my name appearing in all of the local and county newspapers as the Independent Candidate for the Office of Ocean County Freeholder. Upon my arrival in the Security Office as Shift Sergeant and Supervisor of the day shift. My supervisor, Mr. John Whalen began to harass me and sat that only Republicans get elected in Ocean County and that I did not stand a chance. I made many requests to him to give me my evaluation and instead he began to set up his conspiracy to violate my rights.

After working in the hostile work environment for six months I made a request for equal pay violation upon Mr. Ken Olsen, the newly appointed Dean, who also was a white male. Instead of addressing my basic concerns I was punished and recommended for termination. This course of action follows the established pattern of treatment of minorities and my registered right to be free to associate with independent registered votes, Title VII Violation.

Ms. Jan Shlala, the Associate Director of Physical Plant never talked to me about any job concerns. However,

I accepted a phone call from Mr. Dean Haines, member of the Ocean County Republican Party and Ocean County Clerk. The phone call was placed in the early a.m. and after that phone call I received written charges from Mr. John Whalen, Mr. Ken Olsen and Ms. Jan Shlala, all three of my immediate supervisors. I was never given any warnings and when the local politicians were calling I intercepted phone calls. Three is a close NEXUS between the phone calls, the charges, the General Election for Ocean County Freeholder, the employment of Ken Olsen, and Ken Olsen's acts of telling a Black woman to pick up his money. His appointment was one of purpose and he quickly carried out his racist acts at the request of the Republican Party.

The College and their attorneys carried out their conspiracy with the help of the Ocean Republican Party and the Ocean County Democratic Party.

After the interception of the phone calls from Mr. M. Dean Haines, the White college officials used the false excuse and suspended me from my duties so that I would not intercept any more phone calls or be able to overhear any details of their sick conspiracy designed to punish Afro-Americans and Native Americans from being Registered Independents in Ocean County and working at the County College controlled by both political parties.

I was put on public display so that all kinds of rumors began to circulate in the community and some people began to ask how I could get so many votes (6,500+) and be terminated and banned from the campus with no warnings and White male and females are warned or the issues are not even put in writing.

My Constitutional Rights to be free from race discrimination is the Law but Ocean County College and its White administration from the Board of Trustees to the White supervisors that carried out he acs and approved the plan are guilty of unclean hands, race discrimination, intimidation and they feel that the Courts will insulate them from their illegal acts, because other White public officials will, such as the Board of Trustees, one of whom was also the Ocean County Prosecutor. Instead of his office transferring the cases they didn't investigate and transfer the cases to a neutral Prosecutor, they quickly threw the complaints out, because that was also part of the conspiracy.

When Grievances were filed by me the College had not intention of dealing with them, because if they did, there would not be a grievance in the first place.

This conspiracy had the roots from the entire county because I had an excellent work history at the college at the same time that I was preparing for what I thought was a fair grievance. The college attorney was sending letters to the EEOC that I deserve to be terminated because of my alleged behavior, while White males and females are not brought up on charges for termination, even when their behavior required same.

The Republican Party and the Democratic Party both receive money from the State of New Jersey to further their own interests, but that does not include an illegal conspiracy against Afro-Americans and Native Americans and their free independent freedom of expression (voting).

The office personnel began to express their political views about he results of the General Election and my position as a registered Independent. They never expressed

any concern about me until they were asked to join in the conspiracy with more lies, and they did.

The Office personnel also asked how I got the job because only Republicans got those jobs. Their harassment was always constant, but the political parties were always making the work experience a very difficult one.

The Republican Officials and the Democratic officials made sure that whatever law was being violated by the College Officials, the minorities would be terminated and their votes would be chilled by this political conspiracy against non-party members in violation of the New Jersey Constitution and the United States Constitution, which forbids such discrimination.

LEGAL ARGUMENT SUPPORTING ISSUANCE OF PETITION

In view of the fact that I was an Independent candidate for a County office that my termination, in addition to the race case was in retaliation for my First Amendment protections under the United States Constitutions.

This Court has applied a balancing test whenever a public employee has asserted that they have been the subject of retaliation for exercising their First Amendment rights. Pickering v. Board of Educ. 391 U.S. 563 (1968). The test requires weighing the interests of the employee, as a citizen, in commenting on matters of public concern *against* the interest of the state, as an employer, in promoting the efficiency of the public service it performs

through its employees. *Id.* at 568, Connick, 461 U.S. at 146. Nunez's insubordinate acts were not expressive First Amendment "Speech", did not address matters of public concern, and were outweighed by the interest of the state.

One of the threshold issues in raising a retaliatory discharge because of an employee's exercise of First Amendment rights is whether the person was discharged for their speech. Pruitt v. Cheney, 963 F.2d 1160, 1163 (9th Cir. 1991) (upholding the discharge of an Army officer because she was discharged for her status as a homosexual not for the content of her speech claiming such in the newspaper); Tindle v. Caudell, 56 F.3d 966, 969-70 (8th Cir. 1995). Thus, if the conduct is not "speech" under the First Amendment, the claim is invalid.

To be certain, the First Amendment Free Speech Clause "is not confined to verbal expression" and "embrace[s] appropriate types of action." Brown v. Louisiana, 383 U.S. 133, 142 (1966). However, communicative conduct or symbolic speech is generally limited to conduct where the intended action is the message itself. Non-verbal conduct will only implicate the First Amendment where a person engaged in the conduct intends to convey a "particularized message" and if the likelihood was great that the message would be understood by those who viewed it. Texas v. Johnson, 491 U.S. 397, 404 (1989); Dunn v. Carroll, 40 F3d 287, 291 (8th Cir. 1994). This rejects "the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." United States v. O'Brien, 391 U.S. 367 (1968).

Fortunately, courts generally distinguish between protected speech and unprotected insubordinate conduct. For instance, in Domiano v. Village of River Grove, 904

F.2d 1142 (7th Cir. 1990), the Court held a fire chief's disagreement with a patient transportation ordinance was protected speech; however, "his adamant refusal to follow the ordinance was insubordination justifying his dismissal." *Id.* at 1146. In other words, the Court distinguished between protected speech and unprotected, insubordinate conduct. "The First Amendment is . . . not a license for insubordinate speech that impedes an employee's performance of his duties or that interferes with the proper functioning of the workplace." *Id.* at 1145.

As a matter of law, Robbins vs. Camden City Board of Education, 105 F.R.D. 49-1985 D.C. N.J., The District Court of New Jersey, that a motion to discuss was improper because a plaintiff has a right to know the identity of all persons who had knowledge of the facts pertaining to the discharge as part of the joint pretrial order prepared by both parties later in the case. In view of the fact that I appeared before the Honorable Freda Wolfson, U.S.D.M., for orders to enforce my several discovery requests under the Court Rules 30 and 34, I was denied Due Process under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The law firm makes reference to receiving the requests and stipulates that there would be No Discovery and IN FACT, THERE WAS NONE, EVEN THOUGH THE MOTIONS WERE PROPERLY FILED AND SERVED ACCORDING TO THE RULES OF THE COURTS. Furthermore, none of my motions for Discovery appear on the Docket and on the Honorable Garret E. Brown, Jr.'s final order of admonishments and sanctions.

"The Court found that the public policy of the State of New Jersey should protect those who are in good faith pursuing information relevant to a discriminatory discharge, and not that under federal law a retaliatory discharge for pursuing a discrimination claim is itself a

discriminatory discharge." 109 N.J., 189, 192 (1988) and 109 N.J. 189, n.l. *LePore v. National Tool & Mfg. Co.*, 115 N.J. 226 (1989).

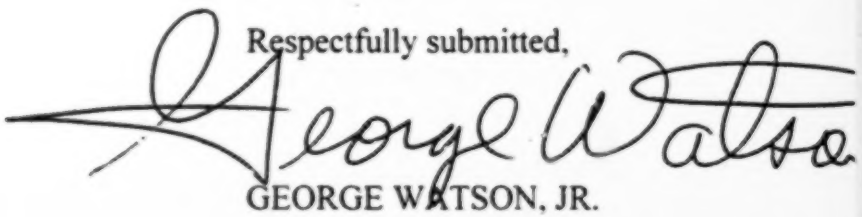
The Honorable Freda F. Wilson denied George Watson, Jr. due process of law and the equal protection clause of the 5th and the 14th amendment by denying a conference to set the schedule and then issuing an order that in part said that no pleadings were to be amended after the October deadline. However, the Honorable Garrett E. Brown, Jr. ignored those orders and allowed a default judgment to be vacated months after service had already been made and weighed. The Judge then sanctioned Mr. Watson for violating orders that were not really violated in my opinion, in view of the Americans with Disabilities Act and New Jersey's law against Discrimination.

CONCLUSION

For the foregoing reasons, Petitioner GEORGE WATSON, JR. respectfully requests this Court exercise its judicial discretion and issue a Writ of Certioiari to consider, in depth, the injustice which has been made against him.

DATED this 1st day of December, 2000.

Respectfully submitted,



GEORGE WATSON, JR.

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Labor Education
Department - Rutgers –
The State University
of New Jersey

Institute of
Management and
Labor Relations
New Brunswick, NJ
Telephone 201/932-9504

Basic Principles of the Union's Duty Of Fair Representation

1. The employee must receive all rights and benefits guaranteed under the clear language of the contract. These rights cannot be waived by informal agreements to ignore or change them.

2. Although the union has the right to settle a grievance involving ambiguous contract language, it has an obligation to apply such a settlement consistently, since "settlement of similar grievances on different terms is discriminatory and violates the union's duty to represent all employees equally."

3. The union has no duty to process every grievance to arbitration when it has made a good-faith judgment that the grievance is frivolous, trivial or wholly without merit. But the employee has a right to equal access to the grievance procedure including the right to arbitration for similar grievances of equal merit.

4. Settlement of grievances for improper motives such as personal hostility, political opposition or racial prejudice constitutes bad faith in and of itself regardless of the merits of the grievance.

5. An employee has a right to have the grievance settled on its merits. Hence a union that trades an

employee's meritorious grievance in exchange for settlement of another employee's or group's grievance violates the union's duty of fair representation.

6. Although a union can make a good-faith judgment that an employee's grievance lacks merit, it nevertheless has an obligation to use reasonable care and diligence in investigating the grievance before it decides that it is non-meritorious.

7. It is not enough merely to process a meritorious grievance to arbitration. The grievance may not be processed in an arbitrary or perfunctory manner.

Prepared by: Joan Stern Kiok,
Co-Adjutant Faculty Member

4/84
RAS/irb

American Arbitration Association
265 Davidson Avenue
Somerset, NJ 08873-4159
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Richard W. Naimark
Regional Vice President

Gene Truncellito
Assistant Regional Vice President

August 27, 1992

George Watson, Jr.
P.O. Box 502
Farmingdale, NJ 07727

Steven F. Nemeth, Esq.
Berry, Kagan & Shradnik
212 Hooper Avenue
P.O. Box 757
Toms River, NJ 08754

RE: 18 390 303 92

George Watson, Jr.
vs
Ocean County College

Grievance: Sergent George Watson, Jr.

Dear Parties

This will advise the parties that Steven Wolf has accepted appointment as Arbitrator in the above captioned matter. The Arbitrator has agreed that for this arbitration the per

diem will be $600.00 for each day of hearing or part thereof and for all time devoted to considering evidence and the preparation of the decision. A full day's per diem will be charged unless fourteen (14) calendar days notice is given of the postponement of any scheduled hearing.

The Arbitrator has proposed October 13, 1992 in order to schedule a hearing.

The parties are requested to advise if the above date is acceptable within ten (10) days of the date of this letter. If, however, the Association does not hear to the contrary it will be assumed that all date(s) proposed are satisfactory and a formal Notice of Hearing will be issued.

Very truly yours,

/s/ Josephine Lefever

Josephine Lefever
Case Administrator

Enclosure(s)

cc: Dr. Milton Shaw
Carol Regula
Seven M. Wolf, Esq.

American Arbitration Association
265 Davidson Avenue, Somerset, NJ 08873-4159
Telephone: (908) 560-9560 • Fax: (908) 560-8850

Philip Levine, CPA, Esq.
Regional Vice President

February 22, 1996

George Watson, Jr.
P.O. Box 502
Farmingdale, NJ 07727

RE: 18 390 303 92

George Watson. Jr.
vs
Ocean County College

Dear Mr. Watson, Jr.:

Please be advised that we have searched our records and have found that the above mentioned case was permanently stayed in October of 1992.

Sincerely yours,

/s/ Deborah Jakubovic

Deborah Jakubovic
Assistant Vice President

ANGIOLETTI RETINA ASSOCIATES

DIPLOMATS OF THE AMERICAN BOARD OF OPHTHALMOLOGY

March 20, 1997

Dr. Rodriquez

RE: GEORGE WATSON DATE OF STUDY: 03/19/97

Dear Dr. Rodriquez:

I had the pleasure of seeing your patient, George Watson, on Mach 19, 1997. He is, as you know, a 50-year-old male with a history of diabetes mellitus. He complains of dropped visual acuity OS for approximately two days' duration. His corrected vision OD is 20/30, and his corrected vision OS is 20/400.

Dilated fundus examination OD demonstrates a cup/disc ratio of 0.3 with a normal appearing optic nerve head. A/V ratio was 2:3 with a normal branching pattern, and the macula is significant for extensive retinal thickening throughout the posterior pole with adjacent areas of hard exudate and multiple areas of intraretinal hemorrhages. The mid peripheral retina demonstrates extensive intraretinal hemorrhages throughout all four quadrants.

Dilated fundus examination OS was precluded by a dense vitreous hemorrhage.

DIAGNOSIS: 1. Clinically significant macular edema OD.

I recommended flourescein angiography followed by focal laser photocoagulation to areas of leaking microaneurysms OD.

2. Vitreous hemorrhage secondary to proliferative diabetic retinopathy OS.

I recommended pars plana vitrectomy to clear the visual axis followed by panretinal laser photocoagulation which will be performed partially during the intraocular procedure, and then completion will be done post-operatively.

Thank you very much for having allowed us to take part in the care of your patient.

Sincerely,

s/s Louis S. Angiolatti

Louis S. Angiolatti, M.D.

LSA/jlm.

RECEIVED
Apr 07 1998
3-40 M
WILLIAM T. WALSH
CLERK

April 2, 1998

The Honorable Garrett Brown, Jr.
United States District Court
402 East State Street
Trenton, New Jersey 08608

Dear Judge Brown:

This is a formal request to you that I wish you would enter Default Judgment against the defendants that the clerk's office entered default against on 4-2-98. They have not answered the complaint or put a notice to the court as to needing more time. I feel that as a matter of Law I feel that Default Judgment would be proper at this time.

Respectfully Submitted,

/s/ George Watson, Jr.
Plaintiff

Attached: Copy of the Docket
Submitted by the Court Clerk

ENTERED ON THE

DOCKET ON 4/20 1998
WILLIAM T. WALSH,
CLERK
By /s/ EHH
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

GEORGE WATSON, JR.,	:	Civil Action
	:	No. 97-5227 (GEB)
Plaintiff,	:	
	:	
v.	:	
	:	
OCEAN COUNTY COLLEGE BOARD OF TRUSTEES, et al..:		SCHEDULING ORDER
	:	
Defendants.	:	

This matter having come before the Court for the entry of a scheduling order pursuant to Fed. R. Civ. P. 16; and good cause appearing;

IT IS on this 17th day of April, 1998,

ORDERED THAT:

1. The parties shall complete all discovery in this capacity on or before October 30, 1998. No discovery shall issue beyond that date, except upon motion and for good cause shown.

2. In accordance with Fed. R. Civ. P. 30, the parties shall be limited to 5 depositions, per party, except

upon leave of the Court. In accordance with Fed. R. Civ. P. 33, the parties shall be limited to 25 interrogatories, (including all suparts), per party, except upon leave of the Court.

3. Any motion to join new parties, whether by amended or third-party complaint, shall be filed no later than June 12, 1998, and made returnable July 6, 1998.

4. Any motion to amend the pleadings shall be filed no later than September 11, 1998, and made returnable October 5, 1998.

5. All discovery motions shall comply with L. Civ. R. 37.1 and 16.1, and be filed no later than October 23, 1998 and made returnable no later than November 16, 1998.

6. All dispositive motions shall comply with L.Civ.R. 7.1, and be filed no later than November 30, 1998 and made returnable no later than December 21, 1998.

7. Counsel shall confer in an attempt to resolve any discovery dispute before making such dispute the subject of a motion. No discovery motion shall be entertained absent counsel's full compliance with General Rule 15C1.

8. No later than July 31, 1998, plaintiff shall serve on defendants copies of the reports of any proposed expert witnesses. Any such report shall be in the form and content prescribed by Fed. R. Civ. P. 26 (a) (2) (B).

9. Not later than September 30, 1998, defendants shall serve on plaintiff copies of the reports of

defendants' proposed experts in the same form and content as described in the preceding paragraph.

10. No expert shall testify at the time of trial as to any opinion, nor to base those opinions on facts, not substantially disclosed in any report as described in the preceding paragraph.

11. No later than November 30, 1998, separate pretrial memoranda shall be submitted to the undersigned, at the U.S. Courthouse, Trenton, New Jersey, in accordance with the enclosed instructions. No appearance is required.

/s/ Freda L. Wolfson
Freda L. Wolfson
United States Magistrate Judge

DRS. BARNES & CARTER
OPTOMETRISTS
317A Orange Road
Montclair, NJ 07042
Telephone: (201) 744-6466

6/2/98

CERTIFICATE
FOR RETURN TO SCHOOL OR WORK

George Watson has been under my care from 7/14/97 to present and is able to return to school/work on _____.

Limitations/Remarks: Diagnosis / Findings

7/14/97 – 367.1 Myopia 372.51 Pinquecula 367.4 Pres

4/21/98 - 3620 Diabetic Retinopathy 368.4 Visual Field Defect

Drs. Barnes & Carter
317 Orange Road
Montclair, NJ 07042
973-744-6466

Sincerely yours,

/s/ Frank Barnes, Jr., O.D.

Dr. Frank Barnes, Jr. O.D.

REC'ED

Aug 3 1998
At 8:30 _____M
WILLIAM TO WALSH
CLERK

August 3rd, 1998

Clerk
United States District Court
Bldg. & U.S. Courthouse
402 E. State Street
Trenton, NJ 08608

RE: Mr. George Watson, Jr. v. Ocean County College, et al, Civil Action No. 97CV 05227

Dear Honorable Garrett Brown, Jr.

On April 2, 1998 a Default was entered by the Clerk's office for Mr. Gerald J. Corcoran, Esq. to file an Answer as required by law.

On August 1, 1998, I received a letter addressed to the clerk's office in opposition to my motion of August 3, 1998. It is clearly out-of-time since it was required to be filed by July 20, 1998.

Therefore, it must not be considered as part of the motion.

Respectfully submitted,

/s/ George Watson, Jr.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

GEORGE WATSON, JR.	:	Civ. No. 97-5227
Plaintiff,	:	(GEB)
v.	:	
OCEAN COUNTY COLLEGE BOARD OF TRUSTEES, et al.	:	MEMORANDUM OPINION
Defendants	:	ORIGINAL FILED August 16 1999 William T. Walsh, Clerk

BROWN, District Judge

This matter comes before the Court on the motion of defendants Ocean County College Board of Trustees, Ocean County College, James Holzapfel, Norma Paul, Vince Packer, Carol Gurdjian, Milton Shaw, John Whalen, Jan Shlala, Robert Seymour, John Weber, John Kane, and Natlie Stites to dismiss Plaintiff's complaint pursuant to FED. R. CIV. P. 41(b). For the reasons set forth in this Memorandum Opinion, issued without oral argument pursuant to FED.R.CIV.P. 78, the Court will grant defendants' motion to dismiss.[1]

1 Although defendants Carol Regula, Kenneth Wiggins, Dawn Lecompte and the New Jersey Education Association did not file a formal motion to dismiss, the Court received a brief on behalf of these defendants joining in the motion filed by the other defendants. Therefore, and in light of the nature of the instant motion, any discussion of defendants' motion will necessarily include these defendants as well.

I. BACKGROUND

On October 20, 1997, plaintiff *pro se* George Watson, Jr. filed a complaint with this Court alleging, inter alia, violations of Title VII, the Fifth, Thirteenth and Fourteenth Amendments to the United States Constitution, various federal civil rights statutes, and the New Jersey Law Against Discrimination. Plaintiff assets that he was employed by Ocean County College in the permanent position of shift sergeant, and also as a community education instructor. Plaintiff claims that although he was terminated from his position as shift sergeant in June 1992, he was advised that his position as community safety instructor was unaffected. Plaintiff states, however, that since his termination as shift sergeant, the course for which he was the instructor has not been offered, nor has he been given any other classes to teach. Plaintiff avers that the conduct of Ocean County College and the other named defendants violated various union contracts in existence between the college and plaintiff's union, and that the violation of these contracts and the termination of plaintiff from his position as shift sergeant was the result of racial discrimination.

According to the factual background set forth by defendants Ocean County College Board of Trustees, Ocean County College, Holzapfel, Paul, Packer, Gurdian, Shaw, Whelan, Shlala, Seymoure, Weber, Kane, and Stites (hereinafter "College defendants") in their moving brief, which is asserted without opposition from plaintiff, plaintiff originally filed a complaint in the United States District Court for the Eastern District of Pennsylvania. Plaintiff then filed a second amended complaint in that court which was assigned docket number 92-6855. *See id.* This action was subsequently transferred to the United States District Court for the District of New Jersey, where it was given

docket number 93-3634 and assigned to Chief Judge Thompson. Defendants in that action then filed a motion for a more definitive statement, which was granted and plaintiff's complaint was dismissed without prejudice. The Memorandum Opinion and Order of dismissal set forth specific conditions that plaintiff was required to satisfy in filing any subsequent complaint, as well as the timeline for such a filing.

Plaintiff subsequently filed five amended complaints asserting that each one complied with the court's order. In light of these filings, defendants filed a motion to dismiss plaintiff's complaint pursuant to Federal Rule of Civil Procedure 41(b). By order of August 19, 1994, the defendants' motion was granted and plaintiff's complaint was dismissed without prejudice. The court's opinion specifically stated that "[p]laintiffs are reminded that any new filings must adhere to the Federal Rules of Civil Procedure and the New Jersey Federal Practice Rules as well as this Court's prior Orders."

Thereafter, on October 20, 1997, plaintiff filed another complaint in the United States District Court for the District of New Jersey, which was given docket number 97-5227 and assigned to Judge Brown[2]. On April 2, 1998, and due to a miscommunication among the parties as to waiver of service of process, default for failure to answer was entered as to the College defendants. Following a series of motions by plaintiff and the aforementioned

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2 According to the College defendants, and as revealed to the Court following its review of the submissions pertaining to the instant motion, the complaint filed in the instant action is almost identical to the second amended complaint filed in the action originally brought in the Eastern District of Pennsylvania..

defendants, default was vacated and plaintiff's motions to certify the case as a class action, to appoint counsel for the class, to strike the answer of defendants Lecompte, Wiggins, Regula, and the New Jersey Education Association (hereinafter "NJEA"), and for leave to file an amended complaint were denied. Additionally, the College defendants were granted leave to file an answer out of time, and said answer was filed on March 1, 1999. Thereafter, the College defendants filed a motion to dismiss plaintiff's complaint, which was joined by defendants Lecompte, Wiggins, Regula, and the NJEA, who submitted a separate brief. The basis of this motion to discuss is plaintiff's alleged previous filing of the same complaint, and plaintiff's asserted failure to comply with court rules and prior court orders, pursuant to Federal Rule of Civil Procedure 41(b).

II. DISCUSSION

A. STANDARD FOR A MOTION TO DISMISS

Rule 41 (b) of the Federal Rules of Civil Procedure provides, in relevant part:

> For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant.

FED. R. CIV. P. 41(b). To dismiss a complaint with prejudice as a sanction for dilatory conduct is a "drastic" measure "reserved for comparable cases." *See Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 867-68 (3d Cir. 1984). The Supreme Court has elaborated that in appropriate cases:

> the most severe in the spectrum of sanctions provided by statute or rule must be available to the district court . . . not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.

National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 643 (1976). The decision of whether to invoke this sanction is entirely within the discretion of the district court. *See Scarborough v. Eubansk*, 747 F.2d 871, 875 (3d Cir. 1984).

The first step in determining whether to sanction a party with dismissal is to ensure that the party against whom the motion is being brought has actual notice of the motion. *See Dunbar v. Triange Lumber & Supply Co.*, 816 F.2d 126, 129 (3d Cir. 1987). The purpose of this requirement is to ensure that a party is given the opportunity to defend himself against the consequences of his attorney's misconduct. *See Curtis T. Bedwell & Sons Inc. v. International Fidelity Ins. Co.*, 843 F 2d 683, 693 n.19 (3d Cir. 1988). Once notice is established, a court must weight and balance the six factors set forth by the Third Circuit in *Poulis* to decide if dismissal of the plaintiff's complaint for lack of compliance with court rules and orders, pursuant to a motion by defendants under FED. R. CIV. P. 41(b), would be appropriate. *See Scarborough*, 747 F.2d 874-78 (applying *Poulis* test to Rule 41(b) dismissal). The six factors to be considered are:

> (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful

> or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense.

Poulis, 747 F.2d at 868; *see also Anchorage Assocs. V. Virgin Islands Bd. Of Tax Review*, 922 F.2d 168. 177 (3d Cir. 1990). The Court, in order to find the dismissal is warranted, need not find that all of the *Poulis* factors weight against the non-moving party. *See Hicks v. Feeney*, 850 F.2d 152, 156 (3d Cir. 1988)., *cert. Denied*, 488 U.S. 1005 (1989).

In turning to the *Poulis* factors, the first one, that of the party's personal responsibility is satisfied by the facts of the instant case. As a party appearing before the Court *Pro se*, there is no one responsible for violation of the court rules and orders applicable in this action except plaintiff himself. Plaintiff has failed to provide the court with any explanation as to why he is unable to comply with applicable court rules and orders. Thus, plaintiff has no one upon whom to lay blame except himself. Therefore, the failure to comply with court rules and orders in this action is the personal responsibility of plaintiff, and the first *Poulis* factor is met.

The second *Poulis* factor, prejudice to the adversary caused by plaintiff's failure to comply, is also satisfied in the instant case. Courts have interpreted this step of the analysis to consist of, *inter alia*. the extra costs of repeated delays and filing of motions necessitated by the improper behavior on the part of a plaintiff. *See Curtis T. Bedwell & Sons, Inc.*, 843 F.2d at 693-94. In the case at bar, defendants have incurred substantial legal fees, and counsel for defendants have spent a considerable amount of time, in an effort to determine the true basis of plaintiff's complaint

and move this matter forward, as well as in response to all of plaintiff's various motions. With the exception of defendants Wiggins, Lecompte, and the NJEA, all of the defendants in the instant action were defendants in the action previously handled by Chief Judge Thompson. This previous action encompassed, inter alia, the following motions: a motion for sanctions by plaintiff, a motion for a more definite statement by defendants, a motion to dismiss plaintiff's second, third, fourth and fifth amended complaints by defendants; a deficient motion to file a sixth amended complaint by plaintiff; a motion to certify the case as a class action, or alternatively to prosecute the actions individually by plaintiff and his co-plaintiffs; and a motion to clarify the order of dismissal by plaintiff and his co-plaintiffs. *See* Docket of Civ. No. 93-3634 at 8-11. In the instant matter to date, and aside from the present motion to dismiss, the following motions have been filed; a deficient motion to certify the case as a class action by plaintiff; a motion to appoint counsel for the class by plaintiff; a motion to strike the answer of defendants Regula, Wiggins, Lecompte, and the NJEA by plaintiff; a motion for leave to file an amended complaint by plaintiff; a motion to vacate default by the College defendants by the College defendants; and a motion for leave to file an answer out of time by the College defendants. *See* Docket of Civ. No. 97-5227 at 3-4. Many of the motions filed in the instant matter are identical to those filed in the previous action, and have required a duplication of effort by counsel in responding to them or preparing motions in response to plaintiff's filings. Futhermore, this matter has been pending, in one form or another, for over six years. The more time that passes following the events of which plaintiff complaints, the more difficult discovery becomes for defendants. This Court therefore finds that there has been sufficient prejudice to defendants to satisfy the second step of the *Poulis* analysis.

The third step of the *Poulis* analysis, that addressing any history of dilatoriness in the proceedings is also met in the instant action. One court has emphasized that in the *Poulis* case, "one failure to answer interrogatories and a failure to file a pre-trial statement were sufficient to support a dismissal." *Andrews v. Government of Virgin Islands*, 132 F.R.D. 405, 412 (D.V.I. 1990) (quoting *Curtis T. Bedwell & Sons, Inc.*, 843 F.2d at 694), *aff'd*, 935 F.2d 1280 (3d Cir. 1991). The *Andrews* case speaks of a "pattern of delay," through the ignorance of numerous time deadlines, and the violation of court orders. *See id.* at 412-13. In the instant actin, plaintiff has exhibited a pattern of non-compliance with procedural requirements and a failure to correct deficient motions. Plaintiff has also failed to file any opposition to defendants' instant motion.[3] Most importantly, however, the gravamen of plaintiff's complaint, despite the passage of a considerable period of time and considerable proceedings before this Court, remains unascertainable. This pattern of inaction and lack of interest in pursuing his claims in this Court demonstrates a history of dilatoriness on the part of plaintiff, thus satisfying the third *Poulis* factor.

The fourth *Poulis* factor addresses whether the behavior of plaintiff has been willful or in bad faith. Although there is no evidence of bad faith, plaintiff's

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3 A review of the file on the Clerk of the Court in the instant matter discloses that the instant motion to dismiss was served on Plaintiff via first class mail on March 10, 1999. Additionally, a certificate of service of the instant motion was filed with the Clerk's office on March 11, 1999. To date, the Court has not received any opposition to the instant motion to dismiss from plaintiff.

Conduct can certainly be classified as willful. While plaintiff has undertaken some measures, in the form of the various motions set forth previously, in an effort to move the instant matter forward, plaintiff's repeated disregard for the Federal Rules of Civil Procedure, as well as for the orders of this Court and other courts within the District of New Jersey, through his repeated filings of deficient and duplicative motions and his failure to respond to defendants' motion, tend to indicate more than mere negligence by plaintiff.[4] This Court therefore finds that the fourth factor of the *Poulis* analysis has been satisfied.

The fifth factor in the *Poulis* analysis requires that the effectiveness of sanctions less drastic than dismissal be addressed. Based upon Plaintiff's extensive litigation history and his failure to oppose the instant motion, coupled with the Court's difficulty in understanding the gravamen

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[4] The Court notes the Plaintiff has a substantial amount of experience with litigation in the District of New Jersey, and therefore should be, at the very least, familiar with the Local Rules of the District of New Jersey, as well as the Federal Rules of Civil Procedure. *See, e.g. Watson v. Freehold Area Hosp. Et al.* Civ. No. 90-291(GEB); *Watson v. Travelers Mortgage, et al.*, Civ. No. 90-292(GEB); *Watson, et al, v. State of New Hampshire*, Civ. No. 90-293 (JCL): *Watson v. Marlboro Bd. Of Educ. Et al*, Civ. No. 90-4104 (AET): *Watson v. State of New Jersey, et al.*, Civ. No. 91-1208(GEB): *Watson, et al. V. Shaw, et al.*, Civ. No. 93-3634(AET); *Watson v. E.C. Corp., et al*, Civ. No. 95-336(GEB); *Watson v. Board of Trustees, et al.*, 97-4729(GEB); *Watson v. Ocean County College Bd. Of Trustees, et al.*, Civ. No. 97-5227(GEB); *Watson v. Hall, et al.*, Civ. No. 98-2800(AMW); *Watson v. Windfield Bd. Of Educ., et al.*, Civ. No. 98-4036(JAG).

of plaintiff's complaint in this action, this Court, in an exercise of its discretion, finds that sanctions in the form of attorney fees against plaintiff, or imposition of defendant's full costs on plaintiff for the delays and unnecessary efforts of their attorneys caused by plaintiff, would not deter plaintiff's future dilatoriness or encourage compliance by him in the proceedings. Based upon plaintiff's past conduct, as evidenced by his participation in other matters and the history of the instant matter, plaintiff's filing of essentially the same complaint that was dismissed in April 1994 and the same motions that were filed as to the complaint previously, and the likelihood that such behavior will continue, this Court finds that dismissal of the present action for failure to comply with court rules and orders is the most appropriate sanction, thereby satisfying the fifth *Poulis* factor.

The final factor in the *Poulis* analysis, the meritoriousness of plaintiff's claim, is not found by this Court to be met in the instant action. The standard under which this factor is determined is that of a dismissal for failure to state a claim on which relief can be granted. *See Andrews*, 132 F.R.D. at 413. "A claim. . . will be deemed meritorious when the allegations of the pleadings, if established at trial, would support recovery by plaintiff. . . " *Poulis*, 747 F.2d at 869-70. As set forth previously, plaintiff's complaint is far from a model of clarity, and despite the allowances made for *pro se* filings in this Court, the basis for plaintiff's complaint still cannot be determined by the Court. Although plaintiff's complaint appears to allege racial discrimination by defendants, the majority of plaintiff's factual allegations, as set forth in his complaint, do not seem to constitute illegal acts by defendants.

This Court finds that all of the factors discussed above weigh in favor of dismissal. Most significant,

perhaps, is the fact that plaintiff is solely responsible for the non-compliance with court rules and orders in this action to date. Additionally, due to the amount of time that has passed between the actions of which plaintiff complains and the present, the prejudice to defendants is ever increasing, and this is the result of plaintiff's conduct and of no fault of defendants. Furthermore, the imposition of lesser sanctions in this action would prove neither just nor workable. Balancing these six factors, this Court finds that dismissal of this action for failure to comply with the applicable court rules and orders, pursuant to FED. R. CIV. P. 41(b), is appropriate. Therefore, this Court will grant the motion of defendants to dismiss plaintiff's complaint for failure to comply with court rules and orders, pursuant to FED. R. CIV. P. 41(b).

III. CONCLUSION

For the foregoing reasons, the Court will grant defendants' motion to dismiss pursuant to FED. R. CIV. P. 41(b). An appropriate form of Order is filed herewith.

/s/ Garrett E. Brown, Jr.
GARRETT E. BROWN, JR. USDJ

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Docket No. 99-5782

GEORGE WATSON, JR.
Plaintiff-Appellant,

v.

OCEAN COUNTY COLLEGE
BOARD OF TRUSTEES, et al.,
Defendants-Appellees.

On Appeal from a Final Judgment of the
United States District Court for the District of New Jersey
(Garrett E. Brown, Jr., U.S.D.J.)
Docket No. Below: 97-5227 (GEB)

REPLY BRIEF FOR PLAINTIFF-APPELLANT GEORGE WATSON, JR.

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Of Counsel:
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On the Brief:
Robert C. Brady, LAR 46.3

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SUMMARY OF THE ARGUMENT

Defendants-Appelles, Ocean County College and several of its employees (collectively "Ocean County College") make several legal errors in their analysis of Plaintiff-Appellant George Watson's appeal as detailed below. Mr. Watson filed a pro se civil rights action against Ocean County College for wrongful discharge, asserting five distinct claims under federal and state law. See Mr. Watson's Opening Brief at 29-33. Default was entered against Ocean County College, which failed to move to vacate for more than one year. After denying Mr. Watson's motion for class certification because of absence of numerosity, the district court simultaneously vacated default and dismissed Mr. Watson's action with prejudice under Fed. R. Civ. P. 41(b) as interpreted by Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863 (3d Cir. 1984). As explained in Mr. Watson's Opening Brief, the district court misinterpreted and misapplied the six so-called "Poulis factors." At base, Mr. Watson demonstrated that he: pleaded meritorious claims; did not act in bad faith; did not impose any significant delay on Ocean County College; and that the drastic sanction of dismissal with prejudice was not necessary to prevent any problematic future conduct.

Ocean County College, in its opposition brief, counters with an argument for each of these points, contending that: Mr. Watson did not file meritorious claims because he did not satisfy even the liberal pleading rules of Fed. R. Civ. P.8; Mr. Watson acted "willfully" in that he intentionally filed the inartful complaint and motion, thus militating toward dismissal with prejudice; Mr. Watson imposed significant harm on Ocean County College because the court should consider a prior action involving some of the same plaintiffs, defendants, and

facts; and Mr. Watson's conduct was so egregious that no less severe sanction than the most severe possible – dismissal with prejudice – could have been effective. As explained below, each of these arguments is either factually unavailing, legally incorrect, or both.

Ocean County College asserts that Mr. Watson's complaint in this action did not state valid claims for relief, violating Fed. R. Civ. P. 8. by failing to state a minimally clear factual basis for liability. Ocean County College fails to acknowledge that the rule provides for pleadings to be liberally construed, see Fed.R.Civ.P.8, and that courts allow extra latitude to pro se parties such as Mr. Watson. More fundamentally, Mr. Watson alleged facts in his complaint that, if established at trial, would unquestionably result in recovery; thus, his complaint – though perhaps inartfully drafted – is entirely sufficient to claim valid claims for relief.

Furthermore, Ocean County College's analysis of this action as encompassing a prior action, and thus constituting a single seven-year action, is not only factually inaccurate, but also contravenes the language of the Federal Rules of Civil Procedure, which limit Rule 41 sanctions to the particular action before the court. Two separate actions existed: First, Mr. Watson and two other plaintiffs filed a case in 1992 against a number of defendants, including Ocean County College, alleging wrongful discharge along with several other claims. This action was voluntarily dismissed shortly thereafter in 1993. In 1997, Mr. Watson filed this new and separate action against Ocean County College; although this case addresses some of the same parties and facts, it is a separate action with a distinct docket number. In any event, even considering the prior action as tangentially relevant, there is still no basis for dismissing this action with prejudice.

Finally, as this Court has repeatedly stated and Ocean County College has acknowledged, dismissal with prejudice is an extreme sanction that should be used only when no lesser sanction could be effective. Mr. Watson's conduct, if sanctionable at all, was not so extreme as to warrant dismissal with prejudice.

ARGUMENT

I. MR. WATSON HAS STATED MERITORIOUS CLAIMS UNDER THE LIBERAL PLEADINGS STANDARD OF FED. R. CIV. P. 8, AS APPLIED TO PRO SE LITIGANTS

Ocean County College repeatedly asserts that Mr. Watson's complaint fails to comply with Fed. R. Civ. P.8, arguing that "the issue is whether plaintiff complied with Fed. R. Civ. P. 8(e) in preparing his seventh attempt at a complaint. It is not whether plaintiff's counsel can parcel through numerous and unintelligible and irrelevant paragraphs in an attempt to glean some cause of action amongst the ramblings." See Ocean County College's Brief at p. 26. Part of this argument is, indeed, correct: if Mr. Watson's Complaint satisfies Rule 8, stating valid and comprehensible claims for relief, dismissal with prejudice is not warranted.

A charitable and good faith reading of the complaint, however, provides the factual and legal basis for Mr. Watson's five causes of action without much difficulty, despite Ocean County College's protestations. See Mr. Watson's Opening Brief at 29-33, Complaint, Appendix at 7. Under the proper legal standard for Rule 8(e), Mr. Watson has stated h is claims with sufficient concision and clarity. Any failings of complaints filed by Mr. Watson and his co-plaintiffs in the prior action have no bearing on the central issue here: whether a sanction is necessary given the state of Mr. Watson's complaint, as it now stands, in order for this action to proceed.

The United States Supreme Court has explained that Fed. R. Civ. P. 8 requires courts to construe all pleadings

liberally. See Beacon Theaters, Inc. v. Westover, 359 U.S. 500, 506 (1959); see also Reynolds v. Ellingsworth, 843 F.2d 712, 715 (3d Cir. 1988). "Under our liberal pleading rules, during the initial stage of litigation, a district court should construe all allegations in a complaint in favor of complainant." Gibbs v. Roman, 116 F.3d 83, 85 (3d Cir. 1997). When the trial court is confronted with an inartfully pleased complaint, it should look to the underlying facts that are leaded by the complainant to see if they state a cause of action. See id. If they do, the case can proceed.

For example, in Gibbs, the complainant pleaded facts alleging that he was repeatedly beaten by other prisoners because of actions by prison officials. See id. At 86. Although the complaint did not mention 42 U.S.C. § 1983, the court found that, charitably construed his factual allegations effectively asserted a § 1983 action. See id. The court made this determination relying on the liberal pleading rules and the fact that the complaint was pro se. See id.

In addition to the liberal interpretation standard, when a complaint contains a number of independent allegations, some of which are sufficient to sustain a claim and some of which are not, the Federal Rules of Civil Procedure allow the sufficiently pleased claims to survive despite the insufficiency in other parts of the complaint: "When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements." See Fed.R. Civ. P.8(e). Thus, Mr. Watson's apparently inadequate allegations concerning a labor law violation do not undermine the validity of the five claims he does state with entirely adequate clarity.

Further, as the Supreme Court has cautioned, pro se complaints are held to a less stringent pleading requirement than those filed by attorneys. See Haines v. Kerner, 404 U.S. 519, 521 (1972). "We must construe the allegations in [plaintiff's] pro se petition liberally, and we may not subject his petition to the standards that we would apply to pleadings drafted by lawyers." United States v. Day, 969 F.3d 39, 41 (3d Cir. 1992). Mr. Watson is not a lawyer, and despite numerous attempts he could not find a lawyer in trial court, or convince the trial judge to appoint counsel. Mr. Watson simply attempted to do the best job that he could in interpreting the Federal Rules of Civil Procedure and drafting his complaint and motion for class certification. Mr. Watson's lawsuit is simply an attempt to protect his civil right not to be wrongly terminated from his job. Our judicial system does not insist that pro se litigants draft exemplary pleadings; what is required is an adequately plain statement of the facts giving rise to liability that a defendant has an adequate basis to defend. Mr. Watson has not only pleaded such facts, but has also stated the legal basis for his five claims. There is no need or basis for sanctions based on the state of his complaint in this action.

II. MR. WATSON HAS IMPOSED LITTLE PREJUDICE ON OCEAN COUNTY COLLEGE IN THIS ACTION

Ocean County College asserts that Mr. Watson mistakes the harm it has suffered because he fails to take into consideration the purported "seven-year" history of this action. See Ocean County College's Brief at p. 18. This assertion exemplifies Ocean County College's repeated attempt to shoehorn a prior related action into this action. Under the language of Rule 41, the issue of whether to grant "dismissal of an action" concerns only this action: i.e., Mr. Watson's law suit that was filed on October 20, 1997, given the docket number 97-5227, and assigned to the Honorable Garrett E. Brown, Jr. See Notice of Appeal, Supplement at 1. The prior action filed by Mr. Watson and two other plaintiffs in November 1992 and dismissed by Judge Thompson in September 1993 is tangentially relevant, at best.

Although the prior action involved some of the same parties and facts, it was an entirely separate action, with a separate docket number, and was litigated by different parties before a different Judge. The relevance of this prior action is at most limited to the analysis of prejudice to the defendant in terms of its ability to defend itself in the present action. Perhaps the distinct though related prior action might be relevant if Mr. Watson had acted in bad faith n the prior action, and had in bad faith filed this new action with a continued intent to harm Ocean County College rather than to prosecute his claim. There is no basis in the record for any such finding, instead, Mr. Watson has struggled honestly and in good faith – if not necessarily the legal skills of Clarence Darrow – to get his claim heard in court.

In addition, Ocean County College has in no way been forced to defend this action for seven years, as it contends. Even if this Court were to consider the prior action as relevant for at least some purposes, the history of the litigation in both actions covers less than three total years, and Ocean County College was in default for nearly a year of that period. See Docket Proceedings, Appendix, p.1.

The plaint language of Fed. R. Civ. P. 41 indicates that its drafters intended its application to be limited to particular actions, such as this specific lawsuit – not multiple actions with overlapping facts. See Fed. R. Civ. P. 41(b). Rule 41(b) states in pertinent part that "[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of *an action* or of any claim against the defendant. . ." Id. (emphasis added). To understand the meaning of Rule 41(b) it is necessary to read it in conjunction with another part of the same rule, Fed. R. Civ. P. 41(d), which states in pertinent part:

> [I]f a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Rule 41(d) contemplates the existence of a subsequent "action" that involves "the same claim against the defendant" as a prior action, and provides a specific power for the district court to address problematic conduct in such a context, unlike Rule 41(b). Therefore, under Fed. R. Civ.

P. 41, when an action is dismissed without prejudice, and anew action involving the same claim is filed, the prior action is relevant under Rule 41(d), but at most marginally so under 41(b), which focuses on sanctionable conduct in the particular action at issue.

This construction of the meaning of "action" in Rule 41 is reinforced by the language of Fed R. Civ. P. 3, which states that "a civil action is commenced by filing a complaint with the court." This indicates that each time a complaint is filed in the district court a new action begins. A number of federal courts have construed Fed. R. Civ. P. 41(a), the rule governing voluntary dismissals, in light of Fed. R. Civ. P.3. All federal courts that have dealt with this issue have unanimously held that once an action is dismissed, a federal court treats that action as if it had never been commenced. See Robinson v. Willow Glen Academy, 895 F.2d 1168, 1169 (7th Cir. 1990); see also National R.R. Passenger Corp., v. International Assoc. of Machinists and Aerospace Workers, 915 F.2d 43, 48 (1st Cir. 1990). Therefore, it would not only be unfair but also legally improper to sanction Mr. Watson in this action for conduct that occurred in a prior action.

Moreover, even if some aspects of the prior action are considered relevant dismissal with prejudice is unwarranted because there was no bad faith by Mr. Watson and minimal prejudice to Ocean County College. Moreover, the gist of Ocean County College's argument is that it simply cannot understand Mr. Watson's current complaint – the only complaint he filed in this action. The comprehensibility of prior complaints in prior actions involving other parties is entirely irrelevant.

In the present action, any delay caused by Mr. Watson vanishes in comparison to the delay caused by Ocean County College itself, which failed to answer Mr.

Watson's complaint for nearly a year and a half. Mr. Watson served his complaint on October 20, 1997. See Docket Proceedings, Appendix at 1. Although Ocean County College acknowledges that it received the complaint, it asserts that as a technical matter it was not properly served and thus did not file a timely answer. Default was entered on April 2, 1998. See Feb. Opinion, Appendix p. 32. Ocean County College did not move to set aside the default prior to filing for a dismissal or in the alternative summary judgment. See id. After the Court denied this motion on September 1, 19998, Ocean County College did not file an answer to Mr. Watson's complaint until March 1, 1999, nearly a year and a half after the complaint was filed. See id. Even if one were to accept Ocean County's argument that it was not legally required to respond in a more timely fashion, it is beyond cavil that is leisurely pace over a year and a half severely undermines any argument that it was significant delay in comparison to Ocean County College's conduct.

Even assuming arguendo that the Court is to accept Ocean County College's formulation and the 1993 case as part of the same "action", Mr. Watson's alleged dilatory conduct in filing several amended complaints over the course of a year has not caused any significant prejudice to the defendant – and none that remains relevant to any potential future problems in this case. In fact, any delay in t his case only hurts Mr. Watson. If as Mr. Watson urges, the decision of the district court is reversed and this case is remanded and Mr. Watson is given his day in court, the burden of proof remains his. If any evidence as to what happened has been lost, or if witnesses' memories have dimmed, it will only make Mr. Watson's ability to make out his case more difficult.

III. MR. WATSON'S CONDUCT DOES NOT WARRANT USE OF THE ULTIMATE SANCTION OF DISMISSAL WITH PREJUDICE

Defendant Ocean County acknowledges in its brief that dismissal with prejudice pursuant to Fed. R. Civ. P. 41(b) is a drastic sanction would be adequate. See Defendant's Brief at p. 14. This Court, in explaining Poulis, has cautioned that there is a strong presumption against dismissal with prejudice. See Aliv v. Sims, 788 F.2d 954, 958 (3d Cir. 1988). Although this court properly affirms dismissal with prejudice in appropriate circumstances, such circumstances involve far more egregious conduct than Mr. Watson's.

Poulis itself states that "dismissal with prejudice should be the last, not the first resort." Id. at 869. Similarly in Scarborough v. Eubanks, a companion case to Poulis that was decided the same day, this Court explained that when there is any doubt as to whether a dismissal with prejudice is the proper sanction, the court should err on the side of not dismissing and instead deciding the claim on the merits. See Scarborough, 747 F.2d 871, 878 (3d Cir. 1984).

Ocean County College suggests in its brief that the district court properly considered the efficacy of lesser sanctions in this matter. See Ocean County College's Brief at 24. The district court, however, actually summarily concluded that lesser sanctions would not be appropriate largely because of Mr. Watson's irrelevant prior participation in other legal proceedings. See Opinion at p. 8, Supplement at p. 8. As discussed above, the prior action involving some of the facts is only tangentially relevant,

and the other unrelated matters are entirely irrelevant. See Doyle, 938 F.2d at 35.

Even if the Court were to deem Mr. Watson's conduct in this action to be sanctionable, there is no basis to conclude that a lesser sanction would be I inadequate. As discussed in Mr. Watson's Opening Brief at 47-50, various less severe sanctions were available. Most notably, the court could have entered an order dismissing all claims other than the five stated infra at page 19 (perhaps allowing Mr. Watson a final 10-day window to amend his complaint to clarify any other claims). Failing that, at absolute most, the court could have required Mr. Watson to retain an attorney within a set period of time or face dismissal, or could even have imposed a reasonable monetary sanction if it thought Mr. Watson's conduct was truly in bad faith or otherwise required sanctioning. If the court chose to impose one of these lesser sanctions, it could punish Mr. Watson and induce him to rectify any improper conduct, while protecting the integrity of the system by allowing this case to be resolved on the merits.

Moreover, Ocean County College places mistaken reliance on Mangan v. Weinberger, 848 F. 2d 909, 910 (8th Cir. 1988) in arguing that a lengthy complaint warrants dismissal with prejudice. First, the Eighth Circuit has not adopted the Poulis factors, and its decisions are of course not binding on this Court. More importantly, though, the superficially similar facts in Mangan are readily distinguishable because the plaintiff in Mangan was represented by counsel. Furthermore, the actions taken by the plaintiff in conjunction with his attorney in Mangan are far more egregious than any actions allegedly committed by Mr. Watson.

In Mangan, the plaintiff, who was represented by counsel, alleged that he was improperly removed from the Reserve Officer Training Corps after having been misclassified as 'suffering from paranoid personality disorder. The Court found that the plaintiff had filed two duplicative claims at the same time against 130 military personnel in their individual and professional capacity. See id. One complaint was 432 pages long and contained twenty-eight counts detailed in one thousand seven hundred and ninety-three paragraphs. See id. The other complaint was 622 pages long and contained sixty-four counts and over eighteen hundred paragraphs. See id. On defendant's motion, the court combined the claims into one action and dismissed it without prejudice, giving the plaintiff thirty days to file a proper amended complaint plainly stating his claims. See id. In addition, the court sanctioned the plaintiff's attorney one thousand dollars. See id.

When the plaintiff refiled his complaint, the only changes that had been made were the use of a smaller font, the removal of margins and other white space, and the deletion of quoted army regulations. See id. The court held that the action of the plaintiff and his attorney were unacceptable and thus dismissed the claim with prejudice. See id. The plaintiff's action in Mangan is much more egregious than any action allegedly taken by Mr. Watson. Mr. Watson has never deliberately violated a court order, as the court found done in Mangan. At worst, Mr. Watson may not have understood court orders and rules, but always did his best to move the case forward in good faith without any intent to prejudice Ocean County College.

The complaint that the district court dismissed below as 14 pages, not several hundred, and involved a

good faith pro se litigant, not an attorney representing a client acting in bad faith.[1]

This Court has explained that the use of dismissal with prejudice as a sanction should be carefully limited, because it takes the court's focus away from the merits of the underlying case and away from the judicial system's overriding goal of interpreting procedural rules flexibly to effectuate justice. See Poulis, 747 F.2d at 867. The imposition or even threat of severe sanctions allows potentially liable parties to transfer the focus of the litigation away from the merits and to wart alleged procedural shortcomings in the plaintiff's case. See id.

The history of this case indicates that the concerns of the Poulis court were legitimate, in that despite his best efforts, Mr. Watson has been unable to move this case into discovery, as the defendants continue to focus on alleged deficiencies in a complaint that, at least by now, easily satisfies Mr. Watson's pleading requirements. The district court's construction of Poulis – colored by its understandable frustration with the miscues of a pro se litigant – is so infused with legal error that the court cannot be said to have exercised its discretion in applying the proper legal standard under Fed. R. Civ. P. 41(b). Moreover, applying that standard, properly construed, it would be an abuse of discretion to dismiss with prejudice on this record.

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[1]Further, the Eighth Circuit, not having adopted the Poulis factors, failed to conduct any analysis short of finding that the plaintiff had not complied with court rules. See id at 911.

IV. MR. WATSON'S CONDUCT WAS NOT IN BAD FAITH OR WILLFULLY PREJUDICIAL WITHIN THE MEANING OF POULIS

Ocean County College's analysis of the Poulis factors rests strongly upon the notion that Mr. Watson was personally responsible for all of his actions in this case and that his alleged actions were "willful". See Ocean County College's Brief at 17-22. As Ocean County College suggests, there is no doubt that Mr. Watson intended to file his pleadings and motions in this action. That form of "willful" conduct, however, is not dispositive of "willful[ness] or . . . bad faith" within the meaning of Poulis. See Poulis, 747 F.2d at 868. If the reason a litigant fails to comply with court rules or orders is bad faith, or a willful attempt to impose prejudice on the opposing party, or willful resistance to or refusal to comply with the court's authority, that is an important and valid basis for imposing a sanction. This is partly because willfully wrongful conduct is morally blameworthy, and partly because it is more likely to be repeated in the future. That is simply not the case here, and there is nothing in the record to suggest otherwise.

Whatever Mr. Watson's legal skills, his intent was always to move the litigation toward resolution. He repeatedly tried to have an attorney appointed (because he recognized his own limitations), and he requested that the court hold a scheduling and settlement conference to speed the case. As both Ocean County College and the district court acknowledge, there is no evidence of bad faith on the part of Mr. Watson in filing his papers. See Ocean County College's brief at 22.

In an attempt to create an aura of willful conduct bordering on bad faith by Mr. Watson, Ocean County

College repeatedly asserts that Mr. Watson has filed six amended complaints in this action that are virtually identical. This is simply not true. Most importantly, Mr. Watson did not file any amended complaints in this action before Judge Brown. The complaint at issue here is fourteen pages long and contains facts that if established at trial would create straightforward violations of the following laws: (1) Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), in the form of a racially discriminatory failure to award a raise, failure to promote, wrongful discharge, and retaliatory discharge; (2) Violations of his civil rights under 42 U.S.C. § 1981 for race discrimination by the college as a state actor, related to the terms and conditions of the employment contract; (3) Violation of the Conscientious Employee Protection Act, N.J. Stat Ann. 34:19-1, et seq. (West 1999), for wrongful discharge; (4) Violations under the New Jersey Law Against Discrimination, N.J. Stat Ann 10:5-1 et seq. (West 1999), for race and age discrimination in employment; and (5) Violations of New Jersey common law contract rights. See Mr. Watson's Opening Brief at 29-33, Complaint, Appendix at 7. Although it may be inartfully drafted, Mr. Watson's complaint pleads facts that indicate that his rights have been violated; he should have the opportunity to attempt to establish those facts through discovery, and if he is unable to do so, summary judgment should be granted. There is no basis, however, to dismiss his claim with prejudice at this stage of the proceeding.

Ocean County College's assertion that Mr. Watson's complaint in this action is virtually identical to the complaint that he filed in the previous action is a flat mischaracterization. The current complaint is only about one-tenth the length of the original complaint that Mr. Watson and his co-plaintiffs originally filed in their prior action. The original complaint (modeled in good faith on a

similarly lengthy complaint drafted by Harvard law students, with whom Mr. Watson and his co-plaintiffs consulted that challenged alleged employment discrimination at Harvard Law School) was over a hundred pages long and contained counts related to the other two plaintiffs and to a number of defendants who are not included in the current action. See Supplemental Appendix at 3. In this light, Mr. Watson has unquestionably attempted to comply with court orders and to draft the 14-page complaint in this action in accordance with the Federal Rules of Civil Procedure. Mr. Watson's good faith attempt to bring this case in compliance with court rules simply does not present the willful disregard for court rules, orders, or deadlines contemplated under Poulis.

Ocean County College also relies on the district court's legally erroneous conclusion that Mr. Watson necessarily acted willfully, defying court orders and the Federal Rules of Civil Procedure, based on its conclusions that Mr. Watson knew the Federal Rules of Civil Procedure, and thus must be willfully flaunting them, because he had represented himself pro se in a number of other cases. See Ocean County College's Brief at 17. This conclusion is entirely illogical. If the prior proceedings were shown to have involved bad faith conduct, they might possibly be relevant to resolving ambiguities in Mr. Watson's state of mind in this action, or to ascertaining the severity of sanction necessary to prevent further problems – though even these are of questionable relevance. What is simply irrelevant to Mr. Watson's current alleged bad faith is that he has been a frequent past litigant (with no prior indication of any bad faith). As the Court of Appeals for the Fourth Circuit has explained, conduct in a prior case should not be considered in deciding whether or not to sanction in a current case. See Doyle v. Murray, 938 F. 2d 33, 35 (4th Cir. 1991) ("whatever El-Amin [plaintiff's

attorney] may have done in the Claitt case, however, he did none of those things here, [because] his failure to appear at the pretrial conference appears to be his first and only dereliction in this case"). It is improper and illegal to limit an individual's access to the courts because he has chosen to invoke the court's protection in the past.

CONCLUSION

For the foregoing reasons, Plaintiff-Appellant George Watson, Jr., respectfully requests that the dismissal of his claim with prejudice be reversed.

Respectfully submitted,

/s/ Robert C. Brady
Robert C. Brady, L.A.R. 46.3
Counsel for Plaintiff-Appellant

/s/ Jon Romberg
Jon Romberg, Esq.
Counsel for Plaintiff-Appellant

Dated: April 24, 2000

CERTIFICATION OF SERVICE

I hereby certify that on the date set forth below, I did:

1) file an original and nine copies of the attached Reply Brief of Appellant by sending them via United States Mail to P. Douglas Sisk, Clerk, U.S. Court of Appeals for the 3d Circuit, Office of the Clerk, U.S. Court of Appeals for the 3d Circuit, 21400 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1790; and did

2) serve via United States Mail two copies of the attached Reply Brief of Appellant upon counsel, whose name and mailing address are listed below.

Date: April 24, 2000 /s/ Robert C. Brady
Robert C. Brady

Service List for Opposing Counsel:

Debra B. Alburquerque, Esq.
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CERTIFICATION OF COMPLIANCE WITH RULE 32(a)(7)(b)

I hereby certify that this brief complies with the type-volume limitation stated in Fed. R. App. P. 32(a)(7)(b). Specifically, using the word count feature Corel WordPerfect, this brief is comprise of less than 4930 words.

/s/ Robert C. Brady
Robert C. Brady

UNREPORTED – NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO: 99-5782

GEORGE WATSON, JR.

Appellant

v.

OCEAN COUNTY COLLEGE BOARD OF TRUSTEES; OCEAN COUNTY COLLEGE; JAMES W. HOLZAPFEL; NORMA PAUL; VINCE PACKER; CAROL GURDJIAN; MILTON SHAW; JOHN WHALEN, JAN SHLALA; ROBERT SEYMOURE, DEAN; CAROL REGULA; JOHN KANE, DEAN; NATLIE STITES, KEN WILLINS; NEW JERSEY EDUCATION ASSOCIATION; DAWN LECOMPTE.

Appeal from the United States District Court
For the District of New Jersey
(D.C.CIV.No.97-cv-05227)
District Judge: Honorable Garrett E. Brown

Submitted Under Third Circuit LAR 34.1(a)
May 23, 2000

Before: SLOVITER, and MANSMANN, Circuit Judges
and
WARD, District Judge

(Filed May 31, 2000)

* Honorable Robert Ward (J.) of the United States District Court for the Southern District of New York, sitting by designation.

MEMORANDUM OPINION OF THE COURT

MANSMANN, Circuit Judge.

George Watson, Jr. appeals from an order of the District Court granting the defendants' motion to dismiss Watson's complaint with prejudice pursuant to Fed. R. Civ. P. 41(b).[1] Watson alleges that the District Court erred in applying the factors relevant to a decision to dismiss under Fed. R. Civ. P. 41(b) or, in the alternative, that the District Court "abused its discretion in deciding to dismiss with prejudice." Because we are convinced that Watson's allegations of error lack merit, we will affirm the order of the District Court.

I.

The parties are well familiar with the facts underlying this action and its lengthy and convoluted procedural history. As a result, we recount neither, confining our discussion to the legal issues presented.

We address first whether the District Court erred in applying the governing legal standard when it dismissed Watson's pro se complaint with prejudice. Dismissal pursuant to Rule 41(b) is an extreme sanction reserved for those instances where there is a "clear record of delay or

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[1] This rule permits a District court to dismiss an action "[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of court."

contumacious conduct by the plaintiff." Donnelly v. Johns-Manville Sales Corp., 677 F.2d 339, 342 (3d Cir. 1982). We evaluate the District Court's decision to dismiss Watson's complaint in accordance with the standard announced in Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863 (3d Cir. 1984):

> In exercising our appellate function to determine whether the trial court has abused its discretion in dismissing. . . we will be guided by the manner in which the trial court balanced the following factors, which have been enumerated in the earlier cases, and whether the record supports its findings: (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense.

Id. At 868.[2]

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[2]Our precedent establishes that "not all of the Poulis factors need be satisfied in order to dismiss a complaint." Mindek v. Rigatti, 964 F.2d 1369, 1373 (3d Cir. 1992). "Ultimately, the decision to dismiss constitutes an exercise of the district court judge's discretion and must be given deference by this court – a court which has had no direct contact with the litigants and whose orders, calendar, docket and authority have not been violated or disrupted." Id.

Watson addresses each of the Poulis factors, arguing that none of them favors dismissing his complaint with prejudice. Specifically, Watson contends that: (1) as a pro se plaintiff, his "personal blameworthiness was minimal;" (2) the defendants have suffered only "modest prejudice;" (3) he did not ignore more limits and, therefore, did not have a history of engaging in dilatory conduct; (4) he was not guilty of bad faith; (5) the District Court should have imposed sanctions short of dismissal; and (6) despite inartful drafting, Watson succeeded in stating five facially valid discrimination claims.

The District Court reached a different conclusion with respect to every one of the Poulis factors. Recognizing its obligation to apply the Poulis factors and discussing them in detail, the District Court found, based on references to the record, that "despite allowances made for pro se filings," each of the factors supported dismissal of Watson's claim. We have reviewed the District Court's analysis against the background of the record and are persuaded that the District court, if anything, understated the strength of many of the Poulis factors. In light of the District Court's thorough discussion, we will not revisit those factors. It is enough to say that we do not find error in the District Court's application of our decision in Poulis to the facts of this case or in its exercise of discretion dismissing the action with prejudice. We agree with the reasoning of the District Court and adopt it as our holding here:

> [A]ll of the factors discussed above weigh in favor of dismissal. Most significant, perhaps, is the fact that plaintiff is solely responsible for the non-compliance with court rules and orders in this action to date. Additionally, due to the amount of time that has passed between the

> actions of which plaintiff complains and the present, the prejudice to defendants is ever-increasing, and this is the result of plaintiff's conduct and no fault of defendants. Furthermore, the imposition of lesser sanctions in this action would prove neither just nor workable. Balancing these six factors, this Court finds that dismissal of this action for failure to comply with applicable court rules and orders, pursuant to Fed. R. Civ. P. 41(b), is appropriate.

Watson v. Ocean County College Board of Trustees, Civ. No. 97-5277, mem. op. at 9 (D.N.J. Aug. 16, 1999).

II.

Because we are convinced that the allegations of error raised by Watson lack merit, we will affirm the order of the District Court.

To the Clerk:

Please file the foregoing opinion.

/s/ Carol Los Mansmann
Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO: 99-5782

GEORGE WATSON, JR.

Appellant

v.

OCEAN COUNTY COLLEGE BOARD OF TRUSTEES; OCEAN COUNTY COLLEGE; JAMES W. HOLZAPFEL; NORMA PAUL; VINCE PACKER; CAROL GURDJIAN; MILTON SHAW; JOHN WHALEN, JAN SHLALA; ROBERT SEYMOURE, DEAN; CAROL REGULA; JOHN KANE, DEAN; NATLIE STITES, KEN WILLINS; NEW JERSEY EDUCATION ASSOCIATION; DAWN LECOMPTE.

Appeal from the United States District Court
for the District of New Jersey
(D.C.CIV.No.97-cv-05227)
District Judge: Honorable Garrett E. Brown

Before: SLOVITER, and MANSMANN, Circuit Judges
and
WARD, District Judge *

JUDGMENT

* Honorable Robert Ward (J.) of the United States District Court for the Southern
District of New York, sitting by designation

This cause came to be considered on the record from the United States District Court for the District of and was submitted under Third Circuit LAR 34.1(a) on May 23, 2000.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the District Court entered on August 16, 1999, be and the same is hereby affirmed.

Costs taxed against appellant.

ATTEST:

/s/ Marcia M. Waldron
Acting Clerk

DATED: May 31, 2000

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO: 99-5782

Mr. George Watson, Jr.
Appellant

v.

Ocean County College Board of Trustees; Ocean County College; James W. Holzapfel; Norma Paul; Vince Packer; Carol Gurdjian; Milton Shaw; John Whalen, Jan Shlala; Robert Seymoure, Dean; Carol Regula; John Kane, Dean; Natlie Stites, Ken Willins; New Jersey Education Association; Dawn Lecompte.

Appeal from the United States District Court for the District
Of New Jersey (D.C.CIV.No.97-cv-05227)
District Judge: Honorable Garrett E. Brown

Submitted first Under Third Circuit LAR 34.1(a)

Resubmitted for Panel and En Banc Requested

Before: Sloviter, and Mansmann, Circuit Judges and Ward, District Judge

(Filed May 31, 2000)

* Honorable Robert Ward (J.) of the United States District Court for the Southern District of New York, Sitting by Designation

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A PETITION FOR BOTH PANEL AND EN BANC REQUESTED

I believe that the Court has overlooked some facts in this case because the Law Student and the Attorney that I was assigned refused to put them in, and after the Brief was filed he said to me, "I am going for an interview with the Honorable Garrett Brown". I feel that he should have made that known to me right away because it presents a conflict of interests.

CIVIL RIGHTS

I am of the opinion that Racial Profiling started in New Jersey. It is really part of a large problem that has not even been looked at yet and this case is a real example of JUDICIAL COURT PROFILING against Pro Se Litigants. Blame the Litigant and never allow the case to go before any JURY. The Police on the street would not Racial Profile if the Courts didn't let them, in my opinion.

CIVIL RIGHTS

(WHILE OPINIONS BY PUBLIC HEALTH AUTHORITIES MUST BE RESPECTED IN DETERMINING WHETHER A COMMITMENT VIOLATES ADA, THEIR DECISION MUST BE BASED UPON THE LATEST KNOWLEDGE OF EPIDEMIOLOGY, BIOLOGY, BACTERIOLOGY, AND PUBLIC HEALTH : NO COURT CAN SUBSTITUTE ITS JUDGMENT FOR THOSE AUTHORITIES BROUGHT TO ITS ATTENTION OR FOR EVIDENCE BEFORE IT, AND PUBLIC HEALTH DECISIONS MUST BE ACCORDED DUE DIFFERENT. BUT, SUCH DIFFERENCE IS NOT APPROPRIATE IF THOSE

POWERS ARE EXERCISED IN AN ARBITRARY, UNREASONABLE MANNER, AND COURTS MUST GUARD AGAINST RISK THAT GOVERNMENTAL ACTION MAY BE GROUNDED IN POPULAR MYTHS, IRRATIONAL FEARS, OR NOXIOUS FALLACIES RATHER THAN SCIENCE. THE AMERICAN WITH DISABILITIES ACT OF 1990, 3(2) (B,C), 101(3), 103(B), 42u.C.C.A. 12102(2) (B)C-12111(3) 12113(b).

All along in this litigation I informed the Judge that I was dealing with a Disability and he would reply back in his decisions, but never made any Accommodations for me as required by the AMERICAN WITH DISABILITIES ACT OF 1990 101(3), 42U.S.C.A. 1211(3).

Starting in 1997 I began to have reduced vision. I went to several doctors to see what the problem was. The final doctor said that before he would go into the eyes he wanted to see if my eyes would just clear up. However, when it didn't clear an operation at Wills Eye Hospital was done in 1999. There were good days and bad days but I suffered and tried to keep up with all orders when I could.

SCHEDULING ORDER

A. On April 17th The Honorable Freda L. Wolfson – United States Magistrate Judge, issued an Order. See attached No Motion to Amend Pleadings which were to be filed after September 11, 1998. Service becomes effected when they plead or answer. Their rights were waived by the Law Firm, yet the Honorable Garrett Brown ignored the Order in the file and allowed them to vacate the Default. I filed a request for Judgment and the Docket does not reflect the same. Yet I have a copy of the stamped request (will supply you later.) As a matter of Law the Judgment should be entered in my favor.

Proof of Facts: I, George Watson, Jr., being of full age do avear that the facts contained in this Petition for both Panel and En Banc requested are true upon information and belief. If they are willfully false I am subject to punishment.

Proof of Service: I, Mr. George Watson, Jr., being of full age do avear that on 6/15/200 I mailed a copy of this petition to Mr. Gerald Cochranesq, 3205 Fire Road, Post Office Box 850, Pleasantville, New Jersey 08232 and Mr. Michael T. Barrett, Esq., Post Office Box 1273, Princeton, New Jersey 08540.

UNION RIGHTS

The College and the Employee Association entered into an agreement. I selected an arbitrator. The College went into Superior Court and got a Court Order from a retired Judge and stopped the Arbitration. Even the American Arbitration Association was very shocked and I felt that was racially motivated. I, ask the entire Third Circuit, when has Judicial Discretion become Judicial Discrimination and Racial Profiling in the Courts, the main place that should be fair.

/s/ George Watson, Jr.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-5782

GEORGE WATSON, JR.,

Appellant

v.

OCEAN COUNTY COLLEGE BOARD OF TRUSTEES; OCEAN COUNTY COLLEGE; JAMES W. HOLSAPFEL; NORMA PAUL; VINCE PACKER; CAROL GURDJIAN; MILTON SHAW, DR.; JOHN WHALEN; JAN SHLALA; ROBERT SEYMOUR, DEAN; CAROL REGULA; JOHN KANE, DEAN; NATLIE STITES; KEN WIGGINS; NEW JERSEY EDUCATION ASSOCIATION; DAWN LECOMPTE

Present:

BECKER, Chief Judge,
SLOVITER, MANSMANN, GREENBERG, SCIRICA
NYGAARD, ALITO, ROTH, MCKEE, RENDELL,
BARRY,
AMBRO and FUENTES, Circuit Judges and WARD,
District Judge.*

SUR PETITION FOR REHEARING

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges

who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

/s/ Carol Los Mansmann
Circuit Judge

RECEIVED AND FILED
/s/ Marcia M. Waldron
Marcia M. Waldron, Acting Clerk

M. DEAN HAINES
County Clerk

CARL W. BLOCK
Deputy County Clerk

SCOTT M. COLABELLA
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COUNTY OF OCEAN
OFFICE OF THE COUNTY CLERK

November 16, 2000

George Watson
P.O. Box 502
Farmingdale, New Jersey 07727

Dear George,

Please accept this letter as a certification of your participation as a candidate for public office in three General Elections held in Ocean County.

The Official Canvasser Report indicates that in 1985 you were a candidate for the Office of Sheriff and as an Independent Candidate you received 2,271 votes out of 124,606 votes cast. The Canvasser Report for the 1988 General Election shows that as an Independent Candidate for Sheriff you received 3,050 votes out of 191,888 votes cast. In the 1991 General Election as an Independent Candidate for the Office of the Board of Chosen

Freeholders you received 6,272 votes out of 130,993 votes case.

I trust this information will be of great assistance to you.

Sincerely,

/s/ M. Dean Haines

M. Dean Haines
County Clerk

Supreme Court, U.S.
FILED
JAN 8 2001
OFFICE OF THE CLERK

(2)

No. 00-932

IN THE

Supreme Court of the United States

GEORGE WATSON, JR.,

Petitioner,

v.

OCEAN COUNTY BOARD OF TRUSTEES, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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13 pp

QUESTION PRESENTED

Petitioner has presented several questions to this Court, ranging from allegations of judicial racial profiling to violation of due process of the Fifth and Fourteenth Amendments of the United States Constitution. However, none of the questions presented by Petitioner were decided before the Third Circuit. The only question reviewed and decided upon by the Third Circuit is whether or not Petitioner's complaint was properly dismissed with prejudice.

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Federal Rule of Civil Procedure 12(b)(6) 1

Federal Rule of Civil Procedure 41(b) 3, 4, 5, 6, 9

STATEMENT OF THE CASE

Respondents, Ocean County College Board of Trustees, James Holzapfel, Norma Paul, Vince Packer, Carol Gurdjian, Dr. Milton Shaw, John Whalen, Jan Shlala, Dean Robert Seymour, Dean John Weber, Dean John Kane, and Natalie Stites, (hereinafter "respondents"), accept the statement of the case set forth by Petitioner with the following clarifications and additions.

Petitioner, George Watson, filed an action in the Eastern District of Pennsylvania on November 28, 1992. On August 12, 1993 the case was transferred to the United States District Court, District of New Jersey. Respondents, Berry, Kagan and Sharadnik and the Equal Employment Commission, filed motions requesting a dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6). Petitioner opposed the Motion to Dismiss and filed a Motion for Sanctions against Respondents. At oral argument on September 20, 1993, Petitioner indicated that he was in the process of retaining counsel and that he did not foresee any future problems. The Honorable Ann E. Thompson granted the motions with prejudice. Over the next seven months, Petitioner filed numerous motions with the District Court. In additional, Petitioner filed four Amended Complaints on the date the case was transferred to the District Court of New Jersey.

Petitioner then filed a series of motions. On September 21, 1993, Petitioner filed a second Motion for Sanctions. On October 1, 1993, Petitioner filed a Motion for Reconsideration of the New Jersey District Court's September 20 Order. On October 4, 1993, Petitioner filed a Motion to "deny dual representation". On October 27, 1993, Petitioner filed a Motion to Vacate the District Court's September 21, 1993 Order. On October 27, 1993, Petitioner filed another Motion to Deny Dual Representation. In Orders dated October 12, 1993 and

December 6, 1993, the District Court warned Petitioner that frivolous motions and improper filings would not be tolerated and could result in Rule 11 sanctions.

In his Order of November 8, 1993, the Honorable John J. Hughes, United States Magistrate Judge, found that Petitioner had failed to comply with F.R.C.P. 8 because his Complaint was disjointed, poorly drafted and generally incoherent. Judge Hughes ordered Petitioner to file an Amended Complaint and gave him specific instructions on how to do so properly. Petitioner was given 20 days within which to file the Complaint. Judge Hughes further warned that Petitioner's failure to comply with the Court's Order could result in a dismissal of the action with prejudice.

On January 6, 1994, more than one month after the deadline imposed by Judge Hughes, Petitioner filed his fifth Amended Complaint. The fifth Amended Complaint was almost identical to the previously filed Complaint.

On January 27, 1994, Respondents filed a Motion to Dismiss, returnable March 7, 1994. This District Court of New Jersey received a Mailgram dated February 14, 1994 from Petitioner requesting an extension to time within which to oppose the motion as his leg was in a cast. By Letter Order dated February 23, 1994, the District Court adjourned the motion until March 28 and extended the due date of Petitioner's opposition until March 7, 1994. On March 16, 1994, nine days after Petitioner's opposition was due, Petitioner submitted a sixth Amended Complaint. The Clerk of the Court returned the papers because they were not originals and because Petitioner had not sought leave of the Court to file a sixth Amended Complaint.

On March 7, 1994, Petitioner sent the District Court a second Mailgram requesting certification of a plaintiff's class.

The Mailgram was not filed with the Clerk's office and failed to include briefs or certifications as required by the Rules.

Oral argument on Respondent's January 27, 1994 Motion to Dismiss was held on March 28, 1994. Petitioner was made aware of the date. Counsel for Respondents were present before the District Court at 10:00 A.M. The Court held the Motion until the end of its motion calendar. Petitioner failed to appear. Judge Thomas in her nine page Order dated April 14, 1994, reviewed the standard to dismiss an action under Rule 41(b). Despite the Court's finding that every factor weighed in favor of dismissing Petitioner's Complaint with prejudice, the Court dismissed the Complaint without prejudice. Judge Thompson reminded Petitioner that any new filings must adhere to the Federal Rules of Civil Procedure and the New Jersey Federal Practice Rules, as well as the Court's prior Orders.

Thereafter, on October 20, 1997, Petitioner filed another pro se Complaint with the United States District Court for the District of New Jersey. On February 24, 1999, Respondents filed an Answer with the United States District Court for the District of New Jersey.

On or about March 8, 1999, Respondents filed a Motion to dismiss Petitioner's Complaint. The Motion was returnable on April 19, 1999. While this Motion was pending, Petitioner filed a Notice of Motion on or about July 9, 1999 requesting reconsideration for class action status. Petitioner failed to file a brief in support of his Motion. Instead, Petitioner supplied a Certification and a note on the bottom of the Notice of Motion stating "Re: No Brief is needed in my opinion. GW." Respondents opposed the Motion.

Thereafter, District Court Judge Garrett Brown, Jr. issued a Memorandum of Opinion and Order dated August 13, 1999 dismissing Petitioner's Complaint with prejudice. Judge Brown weighed the six factors as articulated in *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863 (Third Circuit 1984) and opined that dismissal with prejudice of Petitioner's Complaint was warranted.

On May 23, 2000, the United States Court of Appeals for the Third Circuit affirmed the Order of the District Court of New Jersey dismissing Petitioner's Complaint with prejudice.

On or about October 5, 2000, Petitioner applied to this honorable Court for a Writ of Certiorari. His petition was returned for failing to comply with the rules of this honorable Court, and he was given sixty days to conform his petition to the rules of this Court.

REASONS FOR DENYING THE WRIT

Petitioner has presented several questions to this Court, ranging from allegations of judicial racial profiling to violation of due process of the Fifth and Fourteenth Amendments of the United States Constitution. Petitioner argues that the Third Circuit's opinion improperly applies *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863 (3d Cir. 1984) in dismissing Petitioner's Complaint for Petitioner's failure to comply with Court Rules and prior Court orders, pursuant to Federal Rule of Civil Procedure 41(b). According to Petitioner, the Third Circuit's holding discriminates against pro se litigants, violates petitioner's right to Due Process under the Fifth and Fourteenth Amendments of the United States Constitution, and is evidence of judicial racial profiling by the Third Circuit. However, the Third Circuit's Opinion does not so hold. The numerous questions presented

by the petitioner arise from Petitioner's own view of the judicial process, and not from the opinion issued by the Third Circuit. Neither the Third Circuit's actual ruling nor the record below raised the questions presented by the Petition. The Third Circuit's ruling is not in conflict with either *Poulis v. State Farm Firm and Cas. Co.*, or Rule 41(b) of the Federal Rules of Civil Procedure. The Third Circuit's ruling was proper in all respects and respondents respectfully urge this Honorable Court to deny the Petitioner a Writ of Certiorari.

I. NEITHER THE RECORD NOR THE DECISION BELOW RAISE THE QUESTION PRESENTED BY THE PETITION.

Petitioner has presented numerous questions before this honorable Court. Petitioner's legal argument supporting the issuance of Petition revolves around the allegation by petitioner that he has been deprived due process under the Fifth and Fourteenth Amendment, and that he was terminated from his job for exercising his First Amendment freedoms. However, Petitioner's questions were not considered by the Third Circuit. The only question considered by the Third Circuit was whether or not Petitioner's Complaint was properly dismissed with prejudice by the Honorable Garrett E. Brown, Jr. of the United States District Court, District of New Jersey.

The Third Circuit stated in their opinion that the only question presented by Petitioner's appeal to the Third Circuit was "whether the District Court erred in applying the governing legal standard when it dismissed Petitioner Watson's pro se complaint with prejudice". The Third Circuit upheld the United States District Court, District of New Jersey's decision to dismiss Petitioner's complaint with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. That holding was proper in all respects and does not call for a review by this Court.

II. THE THIRD CIRCUIT'S RULING DOES NOT CONFLICT WITH EITHER RULE 41(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE OR *POULIS v. STATE FARM FIRE AND CAS. CO.*

In the Third Circuit, Petitioner argued that the United States District Court improperly dismissed his complaint. In upholding the ruling of the United States District Court, the Third Circuit heavily relied upon the Opinion of the Honorable Garrett E. Brown, Jr., of the United States District Court. Judge Brown provided a thorough analysis of the factors to be considered in dismissing a plaintiff's Complaint. Judge Brown's decision began with the discussion of Federal Rule of Civil Procedure, Rule 41(b). Rule 41(b) states, "For failure of the plaintiff to prosecute or comply with rules or any order of Court, a defendant may move for dismissal of an action or of any claim against the defendant." In his opinion, Judge Brown states that, while the decision of whether or not to invoke the sanction of dismissal is entirely within the discretion of the District Court, the Court must weigh and balance the six factors set forth by the Third Circuit in *Poulis v. State Farm Fire and Cas. Co.* to decide if dismissal of the Petitioner's complaint for lack of compliance with Court rules and orders is appropriate. The six factors to be considered under *Poulis* are: (1) The extent of the parties' personal responsibility; (2) The prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of all alternative sanctions; and (6) the meritoriousness of the claim or defense. Judge Brown then provided an in-depth analysis of each of the *Poulis* factors.

The first *Poulis* factor, that of the parties' personal responsibility, was found to be satisfied by the facts. Petitioner was appearing before the Third Circuit pro se, and therefore there was no one with responsibility for violation of Court Rules and Orders other than the Petitioner himself. Judge Brown found that the Petitioner had failed to provide the Court with any explanation as to why he is unable to comply with the applicable Court Rules and Orders.

The second *Poulis* factor, prejudice to the adversary caused by plaintiff's failure to comply, was also found to be satisfied by Judge Brown. Respondents in this matter have incurred substantial legal fees in an effort to determine the true basis of Petitioner's complaint, and in an effort to respond to all of Petitioner's various motions. Because of this, the United States District Court found sufficient prejudice to Respondents.

The third *Poulis* factor, that of a history of dilatoriness, was also found to have been met. Throughout the six years in which this matter has been pending, Petitioner exhibited a pattern of non-compliance with procedural requirements and a failure to correct efficient motions. This is emphasized by Petitioner's failure to file any opposition to the respondent's Motion before the United States District Court to dismiss Petitioner's Complaint. After six years of filing complaints, the United States District Court found that the gravamen of Petitioner's complaint was still unascertainable.

The fourth *Poulis* factor is met through willful behavior by the Petitioner or bad faith. While the United States District Court found no evidence of bad faith, the Court did find that Petitioner's conduct was willful in regard to his repeated disregard for the Federal Rules of Civil Procedure, as well as the Orders of the United States District Courts and other Courts within the District of New Jersey.

The fifth *Poulis* factor concerns the effectiveness of sanctions less drastic than dismissal. The United States District Court found, in an exercise of its discretion, that sanctions in the form of attorney fees against the Petitioner, or imposition of respondent's full costs on Petitioner for delays and unnecessary efforts would not deter Petitioner's future dilatoriness or encourage compliance by him in the proceedings. The United States District Court based this finding upon Petitioner's extensive litigation history and his failure to oppose Respondent's Motion to Dismiss Petitioner's complaint, coupled with the Court's difficulty in understanding the gravamen of Petitioner's Complaint. The sixth and final *Poulis* factor analyzed by Court deals with the meritoriousness of Petitioner's claim. Despite allowances made for pro se filings by United States District Court, the Court could not find a legal basis for Petitioner's complaint. Judge Brown stated in his Decision, "Although Petitioner's complaint appears to allege racial discrimination by respondent's, the majority of Petitioner's factual allegations, as set forth in his complaint do not seem to constitute illegal acts by respondents."

The Third Circuit agreed with the reasoning of the District Court and adopted it as their holding. The Third Circuit found that

> all of the factors discussed above weigh in favor of dismissal. Most significant, perhaps is the fact that Petitioner is solely responsible for the non-compliance with court rules and orders in this action to date. Additionally, due to the amount of time that has passed between the actions of which Petitioner complains and the present, the prejudice to Respondents is ever increasing, and this is the result of Petitioner's conduct

> and no fault of respondents. Furthermore, the imposition of lesser sanctions in this action would prove neither just nor workable. Balancing these six factors, the Court finds that dismissal of this action for failure to comply with applicable Court Rules and Orders, pursuant to Federal Rule of Civil Procedure 41(b), is appropriate.

The Third Circuit's holding is correct and is not at odds with *Poulis v. State Farm Fire and Cas. Co.*, or Federal Rule of Civil Procedure 41(b).

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request this Honorable Court deny the Petition.

Respectfully submitted,

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